United States Government National Labor Relations Board OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: February 11, 2009

TO : James F. Small, Regional Director

Region 21

FROM : Barry J. Kearney, Associate General Counsel

Division of Advice

SUBJECT: United Nurses Association of California 560-2575-6700

(Parkview Community Hospital Medical Center) 578-2575-6700

Case 21-CG-26 593-2025-2000

This Section 8(g) case was submitted for advice as to whether the Union unlawfully picketed the Employer hospital when it marched on public sidewalks opposite the hospital's parking lots. We conclude that the Union's conduct did not amount to picketing under Section 8(g), because it was not confrontational.

FACTS

On February 25, 2008, Respondent United Nurses Association of California was certified as the collective-bargaining representative for a unit of registered nurses at Charging Party Parkview Community Hospital Medical Center located in Riverside, California. Negotiations have been difficult and the parties have not arrived on an initial agreement. On February 23, 2009, the Region will be going to hearing against Parkview on complaint allegations that include surveillance, unilateral wage and benefit reductions, and direct dealing and polling of employees.

Parkview's premises encompass an entire city block. The hospital building is located in the middle of the property, bordered by several large parking lots. Approximately 350 feet separate the hospital from the public sidewalks adjacent to the street.

On Thursday, December 11, 2008, the Union held a rally at a park across the street from the hospital. The rally began at about 10 a.m, lasted about 40-50 minutes, and featured a number of speakers, including California Lt. Governor John Garamendi. Approximately 250 people attended the rally, including community members, Union organizers, and off-duty employees.

At the conclusion of the rally, a Union organizer called on participants to walk toward the hospital to show their support for the employees' cause. Approximately 150 participants exited the park, some carrying placards. The marchers walked across the street and onto a public sidewalk that bordered Parkview's parking lots. Within the group of marchers, a Union representative lead the participants in chants such as: "What do we want?" ("A Contract!"); "When do we want it?" ("Now!"). The group of marchers walked in a loose, single-line formation, one-to-two-people wide. Most of the participants were walking with their signs and conversing with one another. Among the marchers were community members, young children, and infants in strollers.

The marchers walked the length of a city block, past the hospital. When they reached a cross street, the marchers turned the corner, and continued on the public sidewalk adjoining the hospital's grounds. They walked about one-quarter of the block, at which point the Union organizers called for them to return to the park. The marchers then reversed their direction, walked back around the corner, past the hospital's parking lots and across the street into the park where the rally had been held. The crowd then dispersed.

The hospital's main entrance consists of a driveway though which one can enter and exit the premises by car or on foot. This driveway leads to parking areas which are used by patients, visitors, and employees. The actual hospital facility is in the interior portion of the premises. There are also several other locations on the premises where vehicles and pedestrians may enter and exit.

The march lasted approximately 15-20 minutes. There were no altercations or violence, and the police were not summoned. On two or three occasions during the march, a car

¹ These signs bore both preprinted messages that say such things as "Nurses for Quality Care" and "Put Patients First," as well as hand printed messages that say such things as "Safeguarding Parkview's Future," "Nurses Need a Contract," 'Respect Nurses," "We Love Parkview," and

"Protect Riverside, Protect Parkview."

attempted to enter or exit the parking lot. On each occasion, the marchers stopped on either side of the driveway entrance to allow the cars access to the driveway. The cars were not significantly delayed and entered or existed the premises unimpeded. 3

During the march, a few people stood outside the hospital building entrance to see what was going on. Some of the marchers saw these individuals observing them and shouted out statements such as: "Join our line" and "Support Nurses." No one responded. It is unknown whether these individuals were hospital employees, management, patients or visitors.

ACTION

We conclude that by peacefully marching on public sidewalks approximately 350 feet from the hospital's entrance, the Union did not engage in picketing under Section 8(g) because the march was not confrontational.

In evaluating whether Union conduct constitutes picketing, the Board has acknowledged that "the 'important' or essential feature of picketing is the posting of individuals at entrances to a place of work." In Alden Press, the Board held that the patrolling and carrying of placards, at places apart from the neutral premises, was

² The parties dispute whether the marchers stopped upon direction from the Hospital's security guards or from the Union organizers. In either event, the cars were quickly allowed access to or from the parking lot.

 $^{^3}$ In addition, one pedestrian asked a hospital security guard to escort her across the street because she did not want to walk alongside the protesters. The guard did so without incident.

^{4 &}lt;u>SEIU Local 87 (Trinity Maintenance)</u>, 312 NLRB 715, 743 (1993).

 $^{^{5}}$ Chicago Typographical Union No. 16 (Alden Press, Inc.), 151 NLRB 1666 (1965).

not picketing because it involved no confrontation with the neutral employer's employees, customers, or suppliers.

In the instant case, the Union's demonstration and subsequent march similarly was insufficiently confrontational to constitute picketing. The march was an extension of a peaceful public demonstration at a neighboring park designed to call community attention to the Union's attempt to negotiate a first contract. As opposed to a traditional picket line, there was no intention to confront the public or hospital employees. Instead, the marchers were simply advertising their support of the unit employees to the public at large. While the marchers carried placards, the presence of signs is only one indicium of picketing. 6 It is not determinative where the event takes place far from the employer's entrance and the participants do not confront patrons or employees. 7 Here, the marchers were separated from the hospital by an approximately 350 foot wide parking lot, and they made no attempt to enter the hospital's property. There similarly is no evidence that the march resulted in any interference with the neutral's operations. Cars were able freely to enter and exit the parking lot with only a slight delay as the marchers stopped to allow them through. And although the marchers walked past the hospital, thereby crossing the driveway leading to its parking lot, the Union neither patrolled entrances to the facility nor posted demonstrators at the facility.8

6 Alden Press, 151 NLRB at 1668-69 (stating that "patrolling and the carrying of placards . . . do[] not per se establish that 'picketing' . . . was involved"); Mine Workers (New Beckley Mining), 304 NLRB 71, 72 (1991) ("Picket signs or placards, while serving as indicia of picketing, are in no sense essential elements for a finding that picketing occurred.").

⁷ <u>Alden Press</u>, 151 NLRB at 1669 (picketing not found; general parading through large public areas in shopping center rather than adjacent to individual businesses held not confrontational).

⁸ Lumber & Sawmill Workers Local No. 2797 (Stoltze Land & Lumber Co.), 156 NLRB 388, 394 (1965) (important indicia of picketing is the posting of individuals at the "approach to a place of business to accomplish a purpose which advances

Under these specific circumstances, the Region should dismiss the charge, absent withdrawal.

B.J.K.

the cause of the union, such as ... keeping customers away from the employer's business.").